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Supreme Court, U.S.
FILED

No. 00 765 NOV 13 2000

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In The

SUPREME COURT OF THE UNITED STATES

♦

IN RE: HARRY W. VINSON
BRAD VINSON
Petitioners

vs.

DOROTHY COLOM; ET AL
Respondents

♦

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

♦

PETITION FOR WRIT OF CERTIORARI

♦

Harry W. Vinson
Brad Vinson
P. O. Box 791
New Albany, MS 38652
in propria personna

24pp

QUESTION PRESENTED

I. Does a judge's actions absent all jurisdiction invoke the Rooker Feldon Doctrine and immunity defenses. .

II. Can a judge require a litigant to get permission before petitioning the government for a grievance done to him, filing pleadings, etc., when litigant was not asking a privilege of forma pauperis and had paid all required fees, and without the opportunity of fair notice of the requirement and a meaningful opportunity to respond.

III. Did the federal district court depart so greatly from established federal Rules of Civil Procedure and controlling Supreme Court of The United States in exercising its supervisory powers?

OTHER PARTIES TO THE PROCEEDING

WILLIAM (BILL) BENSON
STATE FARM FIRE AND CASUALTY Co.
FRED M. BUSH, JR.
KAY TRAPP
PHELPS DUNBAR LLP LAW FIRM

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PETITION FOR WRIT OF CERTIORARI

Petitioners Harry W. Vinson and Brad Vinson, prays that a writ of certiorari issue to review the judgment of The Federal District Court and the Fifth Circuit Court of Appeals 25 August 2000 denying petition for rehearing on civil rights violations under Title 42 USC §1983 & 1985.

———♦———

OPINIONS BELOW

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 1:99CV098-B-D Memorandum Opinion 6 October 1999. [App. 1]

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 99-60826 Appeal Denied 27 August 2000 [App. 7]

IN RE: HARRY W. VINSON, BRAD VINSON vs DOROTHY COLOM, et al; No. 99-60826 Rehearing Denied 25 August 2000 [App. 10]

———♦———

JURISDICTION

The per curiam opinion of the court of appeals was entered 27 July 2000 and a timely petition for rehearing was denied 25 August 2000. The petition for a writ of certiorari was filed 9 November 2000. The jurisdiction of this Court is invoked under 28 U.S.C. §12514(b1)(2); U.S.A.

Constitution Article III §2 and Rules of The Supreme Court of The United States Rule 10(a).

CONSTITUTIONAL PROVISIONS

USA Constitution Article I Section 10 ...
"impairing the obligation of contract,...."

USA Constitution Bill of Rights
AMENDMENT I ...
"Religious rights" and "to petition the government for a redress of grievance."

AMENDMENT XIV ...
"due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

This case involves violations of Petitioner's Constitutional Rights brought under 42 USC §1983 for violations to Petitioners under USA Constitution Article 1 Section 10, laws impairing obligation of contract; Bill of Rights Amendment I, religious rights; and Amendment XIV due process and equal protection of the law. Complaint was filed in the U.S. District Court for the Northern District of Mississippi with summons and complaint being served. Complaint was drafted pursuant to F.R.C.P. Rule 8(a) with

respondents failing to answer the averments in the complaint pursuant to F.R.C.P. Rule 8 (b)(d), however Respondents filed a F.R.C.P. Rule 12(b)(6) motion, thereby admitting to the averments in Petitioner's complaint.

Petitioners responded to Respondents F.R.C.P. Rule 12(b)(6) motion and proceeded to clarify the issues raised through discovery pursuant to F.R.C.P. Rule 26 - 37. All discovery was stayed by the district judge in violation of the Federal Rules of Civil Procedure and its uniform local rule 26.1(10). Respondents, with exception of Dorothy Colom, never responded to discovery, Colom filed to stay discovery.

The district judge, with motions pending regarding discovery issues, abruptly dismissed the case relying on immunity and failure to state a claim, and without due process closed the courts to petitioners and a timely filed petition to rehear was denied and the case was appealed to the Fifth Circuit Court of Appeals. The appellate court affirmed the district court's dismissal under different grounds, lack of subject matter jurisdiction (Rooker-Feldman Doctrine) and upheld the closing of the courts to Petitioners to petition their government for a redress of grievance done to them. A timely filed petition to rehear was denied by the appellate court 25 August 2000.

REASON FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

A. SUMMARY OF THE ARGUMENT

Petitioners enjoy Rights pursuant to the Constitution and remedies for violations of those rights. Among these are the ability to contract, religious rights, petition the government for a redress of grievance, due process and equal protection of the laws. Petitioners were denied all these guaranteed rights which are further secured under a congressional act 42 USC §1983.

B. ARGUMENT

Petitioner's filed a 42 USC §1983 complaint for violations of their constitutional rights which was based upon Respondent Dorothy Colom being absent all jurisdiction, issuing orders in a case which ad been appealed and perfected. A final order was issued by the trial Judge, Chancery Judge Timothy Erwin, **13 October 1998**, and was appealed **9 December 1998**, thereby transferring jurisdiction to the appellate court [reference to an order signed by Judge Dorothy Colom **18 November 1998** by U.S. District Judge Biggers in his memorandum opinion is false as no such order exists]. Without reason, without authority, without jurisdiction, Dorothy Colom, a judge, from outside the trial court district, appeared in this case on appeal, held hearings and issued orders in violation of Petitioner's secured Constitutional Rights under Article I Section 10 and the First and Fourteenth Amendments. Respondent Dorothy Colom specifically voided a

power of attorney, properly executed and recorded, between father and son, the power of attorney was specifically for health care and business affairs, interfered with the religious beliefs and practices of father and son in regard to son's obligation to the father and denial of due process and equal protection of the law. We repeat Respondent Colom, a judge, issued orders in a case that a judge of jurisdiction had issued a final order on and while the case was on appeal. Damages resulted from the unlawful issuing of orders, by Respondent Colom, without jurisdiction in the case, and because of the illegal and unlawful orders Petitioner Harry W. Vinson was unable to give health care to his father resulting in his premature death and the confiscation of over $100,000.00 from father's estate, unaccounted for and undocumented. In argumento if Respondent Colom had jurisdiction, she could not have voided the contract - a power of attorney- between father and son, Hunt vs Rousmanier's, 8 Wheat 174; Hale vs Hinkle, 201 U.S. 43 (1906).

Petitioners filed a verified 42 USC §1983 complaint with documentation of the foregoing, Respondent Colom moved for stay of discovery along with a F.R.C.P. Rule 12(b)(6) motion (immunity) Respondent Benson moved for F.R.C.P. Rule 12(b)(6) motion (immunity) with other respondents filing F.R.C.P. 12(b)(6) motions. Averments in complaint were not answered pursuant to the rules of court.

Petitioner's moved for discovery to show Respondent Colom and Benson did not qualify for immunity in that Colom was absent all jurisdiction

for her over acts and that Benson could not claim governmental type immunity for acts in his private capacity of an unlawfully appointed conservator. Upon filing for discovery to prove the important elements, the district court stayed all discovery in violations of F.R.C.P. Rule 26 - 37 and Conley v Gibson, 355 U.S. 41. The remaining respondents did not respond to discovery which would have proven a cause of action. The federal district court abruptly dismissed all respondents prior to ruling on discovery motions, relying upon failure to state a claim, Colom - judicial immunity and Benson - quasi judicial immunity which violates the principles set forth by this court, Bell v Hood, 327 U.S. 678 and the federal district court judge falsely stated in his memorandum opinion of 25 August 2000 dismissing the case, that Respondent Colom signed a final order 18 November 1998 in that case. A petition for rehear was filed and denied and case was appealed to the Fifth Circuit Court of Appeals.

The Fifth Circuit Court of Appeals affirmed the judgment of the district court, with the false statement that Respondent Colom had issued a final order 18 November 1998, under alternative grounds stating it was without jurisdiction to hear the matter under the Rooker-Feldman Doctrine, which is not valid in that this case is a 42 USC §1983 cause of action, and not an attempt to appeal a state action to a federal court, as Petitioners' constitutional rights were violated and the Petitioners did not address the merits of the state court on appeal. A favorable decision in this matter would not affect the merits of the state action on appeal to the Mississippi Supreme

Court, therefore it cannot be said to be intertwined.

The appellate court further upheld the district court's order requiring Petitioners to obtain prior permission before filing a petition for redress of grievance into the federal district courts in any manner even though Petitioners pay the required filing fees and never applied for forma pauperis status, none were frivolous in that all have stated constitutional violations and none were brought in bad faith.

The courts have held that prior to disciple or disbarment of attorneys, they must be afforded fair notice and a meaningful opportunity to respond, Schware vs Board of Bar Exam, 355 U.S. 232, 238 and In Re: Ruffalo, 390 U.S. 544. If the attorney is entitled to notice and opportunity as a matter of the bar, the private litigant, not contracting with the bar is also entitled. If the attorney is entitled to due process, so is the sovereign individual litigant in his own person, to pass Constitutional muster of equal protection of the laws.

Stated briefly, the federal district court and the court of appeals have disregarded the Federal Rules of Civil Procedure, Congressional Acts, The Constitution of The United States and controlling U.S. Supreme Court case law, thereby denying Petitioners' due process and equal protection of the laws in the prosecution of Petitioners' Complaint. When jurist ignore the law, they not only attempt to harm we, the people, but they make a mockery of the law and by refusing their assent to the law for the appearance of a private

interest of others is obstructing the administration of justice.

CONCLUSION

For all the foregoing reasons, The Supreme Court of The United States, the court of last resort, should exercise its supervisory powers and authority under Article III Section 2 of the Constitution to secure all parties due process and equal protection of the law at trial and appellate levels and grant the review of Petitioner's writ of certiorari.

Respectfully submitted,
without prejudice,

Harry W. Vinson
Brad Vinson
P. O. Box 791
New Albany, MS 38652

in propria persona

November 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
MISSISSIPPI, EASTERN DIVISION

HARRY W. VINSON AND
BRAD VINSON PLAINTIFFS

vs. Civil Action No. 1:99CV098-B-D

DOROTHY COLOM, ET AL. DEFENDANTS

MEMORANDUM OPINION

This matter comes before the court upon the defendants' motion to dismiss. Upon due consideration of the parties' memoranda and exhibits, the court is ready to rule.

FACTS

On **November 18, 1998**, Chancery Court Judge Dorothy Colom entered a final decree in cause numbers 96-0078 and 96-1110, in the Chancery Court of Lee County, Mississippi. These actions concerned the appointment of a guardian for Woodrow and Kernith Vinson. The Plaintiffs were parties to these actions and timely perfected their appeal to the Mississippi Supreme Court on or about **December 9, 1998.**

On **February 2nd** and **3rd, 1999**, Judge Colom presided over a hearing in which Kernith Vinson, the mother of Harry Vinson and the grandmother of Brad Vinson, was seeking a temporary restraining order and preliminary injunction against Harry and Brad Vinson. The purpose of Mrs. Vinson's petition was to prohibit the plaintiffs from taking any action concerning Woodrow W. Vinson, the father of Harry Vinson

and grandfather of Brad Vinson. Fred M. Bush, jr. and Kay Trapp, both attorneys with the law firm of Phelps Dunbar, L.L.P. in Tupelo, Mississippi, represented Kernith Vinson in the matter. Upon Conclusion of the hearing, Judge Colom granted the preliminary injunction sought by Mrs. Vinson.

Subsequently, by order dated **March 19, 1999**, Judge Colom appointed William H. (Bill) Benson, the Chancery Court Clerk for Lee County, Mississippi, as conservator for Woodrow W. Vinson and Kernith Vinson.

On March 31, 1999 the plaintiffs filed this action against Judge Colom, Bill Benson, Phelps Dunbar, L.L.P., Fred M. Bush, jr., Kay Trapp, State Farm Fire Casualty Company and other unknown defendants, alleging violations of their "United States of America Constitutional Rights, and Civil Rights, and Title 42 §1983, Title 42 §1985(3)", seeking a temporary restraining order and damages in excess of $100,000,000.00 dollars.

LAW

The defendants' motion is brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In considering a motion under Rule 12(b)(6), the district court must accept all well-plead facts as true and view them in the light most favorable to the plaintiff. Baker v Putnalm 75 F.3d 190, 196 (5th Cir.1996). Dismissal is not appropriate unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Doe v Hillsboro Indep. Sch. Dist., 81 F.3d 1395, 1401-1402 (5th Cir. 1996).

1) JUDGE COLOM'S MOTION TO DISMISS Judicial immunity is a well established principle of American Jurisprudence. Brinkman v

Johnston, 793 F.2d 111, 112 (5th Cir. 1986); Stump v Sparkman, 435 U.S. 349, 362-64, 98 S.Ct. 1099, 1107-1109, 55 L. Ed. 2d 331 (1978). Judicial immunity may only be overcome if it can be shown that a judge's action was either not judicial in nature or that it was outside the judge's judicial capacity, or that a judicial action was taken absent jurisdiction. Stump v Spakman, 435 U.S. at 356-57; Forrester v White, 484 U.S. 219, 227-29, 108 S. Ct. 538, 98 L.Ed. 2d 555 (1988). The Court finds that Judge Colom's actions were at all times within the scope of her judicial duties and thus she is absolutely immune from suit.

2) State Farm Fire and Casualty Co. and Bill Benson's Motion to Dismiss State Farm Fire and Casualty Company is the surety for Bill Benson's bond in his capacity as Lee County Chancery Clerk. The plaintiffs' claims against State Farm Fire and Casualty Company arise solely from the actions of Mr. Benson. Mr. Benson filed his motion to dismiss in this action and it was thereafter joined by State Farm. Therefore, the Court will consider these two defendants motions to dismiss collectively.

State court clerks are entitled to quasi-judicial immunity for actions taken pursuant to their official position. Boston v Lafayette County, Mississippi, 744 F. Supp 746, 750 (N.D. Miss. 1990), aff'd 933 F.2d 1003 (5th Cir. 1991) ("quasi-judicial immunity shields lower officials, such as clerks who implement judicial orders.")' Johnson v Craft, 673 F. Supp. 191, 193 (S.D. Miss) ("Court clerks are immune from liability when performing official acts."). Bill Benson was appointed conservator for Woodrow and Kernith Vinson in his official capacity as Chancery Court Clerk of

Lee County and pursuant to Mississippi code Annotated, §93-13-21. The court finds that Bill Benson was at all times acting within his official capacity and therefore enjoys quasi-judicial immunity and is immune from suit. Further, the court finds that as Mr. Benson's actions were within the scope of his professional duties, thus the plaintiffs have failed to state a claim against the defendant State Farm Fire and Casualty Company.

3) PHELPS DEFENDANTS' MOTION TO DISMISS The plaintiffs contend that by means of the Lee County Chancery Court proceedings for appointment of conservator for Woodrow W. Vinson, the Phelps defendants willfully conspired with Judge Colom and/or Bill Benson "to extort, take, and defraud Plaintiffs of their personal, private and real property" under 42 U.S.C. §§1983 and 1985.

A Claims Under 42 U.S.C. §1983

Acts of private individuals may support an action for liability under 42 U.S.C. §1983 if the individuals are "willing participant[s] in a joint action with the state or its agents." Brinkman, 793 F. 2d at 112; Dennis v Sparks, 449 U.S. 24, 101 S. Ct. 183, 66L. Ed. 2d 185 (1980). "The elements of civil conspiracy are 1) an actual violation of a right protected under §1983 and 2) actions taken in concert by the defendants with specific intent to violate the aforementioned right." Kerr v Lyford, 171 F.3d 330,339 (5th Cir. 1999). Section 1983 claims require that the "claimant ... state specific facts, not merely conclusive allegations." Hale v Harney, 786 F.2d 688, 690 (5th Cir. 1986); Lynch v Cannatella, 810 F.2d 1363, 1369-70 (5th Cir. 1987); See also, Young v Biggers, 938 F.2d 565,

566 (5th Cir. 1991). Specific facts of the conspiracy must be plead with particularity, not simply alleged in broad, vague assertions. Lynch, 810 F.2d at 1370. Additionally, "a lengthy line of decision [in the 5th Circuit] ... holds that litigants may not obtain review of state court actions by filing complaints about those actions in lower federal courts cast in the form of civil rights suits." Hale, 786 F.2d 690-91; Brinkman, at 112; See also, Sawyer v Overton, 595 F.2d 252 (5th Cir. 1979; Kimball v The Florida Bar, 632 F.2d 1283 (5th Cir. 1980).

In the instant case, the plaintiffs have merely alleged in broad, vague language that the defendants "willfully participated in the plan and purpose of the conspiracy." They have failed to plead with particularity and specific facts of the alleged conspiracy, but rather generally state conclusory allegations. Such bald conclusions will not suffice. The court holds that the plaintiffs have failed to plead facts sufficient to state a claim of a conspiracy under 42 U.S.C. §1983.

B. Claims Under 42 U.S.C. §1985(3)

Allegations of specific facts of a conspiracy are necessary order to state a claim under 42 U.S.C. §1985(3). U.S. ex rel. Simmmons v Zibilich, 542 F.2d 259 (5th Cir. 1976). Furthermore, a plaintiff must allege racial or other class-based discrimination motivated said conspiracy. Mitchell v United Parcel Service, 21 F. Supp. 627, 630 (S.D. Miss. 1998); Green v State Bar of Texas, 27 F.3d 1083, 1088 (5th Cir. 1994). The plaintiffs have failed to allege any class-based animus for an conspiracy, and , as stated above, the plaintiffs' claims are insufficient to state a claim of conspiracy. Therefore, the

court finds that the plaintiffs have failed to state a claim under 42 U.S.C. §1985(3); and thus have failed to state a claim against the Phelps defendants.

CONCLUSION

For the forgoing reasons, the court finds that the motions to dismiss filed by defendants Dorothy Colom, William H. Benson, State Farm Fire and Casualty Company, Fred M. Bush, jr., Kay Trapp, and Phelps Dunbar, L.L.P. should be GRANTED.

The court further finds that although the plaintiffs are proceeding pro se, they either individually or on the behalf of third parties, have filed an overabundance of actions in this court. Given the lack of legal foundation and volume of cases filed by these individuals, the court holds that neither Harry W. Vinson or Brad Vinson may file, on their on behalf, for any other individual, on their behalf by any third party individual who is not a licensed attorney, or otherwise, any action in the United States District Court for the Northern District of Mississippi without prior permission of the court.

An order will issue accordingly.

THIS, the 6 day of October 1999.

s/s

Neal B. Biggers, Jr.
Chief Judge

file date: October 8, 1999

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-60826
Summary Calendar

HARRY W. VINSON: BRAD VINSON
Plaintiffs-Appellants

v.

DOROTHY COLOM: WILLIAM (BILL) BENSON, his agents and assigns and his insurance carrier; State Farm Fire and Casualty Co.; FRED M. BUSH, JR., his agents and assigns and his insurance carrier to be named after discovery; KAY TRAPP, her agents and assigns and her insurance carrier to be named after discovery; PHELPS DUNBAR LLP LAW FIRM, their agents and assigns and their insurance carrier to be named after discovery.
Defendants- Appellees.

Appeal from the United States District Court for the Northern District of Mississippi
USDC No. 1:99-CV-98-B-D

Before JOLLY, HIGGINBOTHAM, and EMILIO M. GARZA, Circuit Judges

PER CURIAM:

The plaintiffs appeal the district court's Fed.R.Civ.P. 12(b)(6) dismissal of their civil rights complaint pursuant to 42 U.S.C. §§1983 and 1985(3), as well as the district court's order requiring them to obtain prior permission before filing any other action n the district court. The

plaintiff's complaint alleged that the defendants conspired to deprive them of various constitutional rights by having Mississippi Chancery Court Judge Dorothy Colom appoint William Benson as conservator of Woodrow W. Vinson.

"Federal courts, both trial and appellate, have a continuing obligation to examine the basis for their subject-matter jurisdiction." MCG, Inc. v Great W. Energy Corp., 896 F.2d 170, 173 (5th Cir. 1990). "The issue may be raised by parties, or by the court sua sponte, at any time." Id.

Federal district courts lack jurisdiction to engage in appellate review of state court judgments. See District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 482 (1983); Rooker v Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). The constitutional issues presented in the plaintiffs' action are inextricably intertwined with the Chancery Court's order appointing Benson as Vinson's conservator. Accordingly, the plaintiffs' action constituted a request that the district court review a state court decision. See United States v Shepherd, 23 F. 3d 923, 924 (5th Cir. 1994). The district court's dismissal of the plaintiffs' complaint is therefore affirmed on the ground of lack of subject matter jurisdiction. See sojourner T v Edwards, 974 F.2d 27, 30 (5th Cir. 1992) (court of appeals may affirm district court's judgment on any basis supported by the record).

The district court did not abuse its discretion in , requiring the plaintiffs to obtain prior permission before filing an action in the district court. Gelabert v Lynaugh, 894 F.2d 746, 747-48 (1990). A district court may enjoin future filings in order to protect its jurisdiction and control its

docket. Farguson v MBank Houston, N.A., 808 F.2d 358, 360 (5th Cir. 1986). Pro se litigants are not immune from the imposition of sanctions if they "harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets." Id. at 359.

This is the plaintiffs' second appeal from a district court dismissal of claims challenging an order issued in Mississippi Chancery Court Cause No. 96-0078/96-1110. See Vinson v Colom, No. 99-60825 (5th Cir. June 16, 2000) (unpublished). The plaintiffs are warned that it is within this court's power under Fed.R.App.P. to impose sanctions upon parties who take frivolous appeals. See Vinson v Heckmann, 940 F.2d. 114,116 (5th Cir. 1991).

The plaintiffs are also warned that it is inappropriate to include derogatory personal comments about a district judge in documents filed with this court. Such comments, even by pro se plaintiffs, invite the striking of the documents in which they are contained. See Theriault v Silber, 574 F.2d 197 (5th Cir. 1978).

Affirmed; Sanctions Warnings Issued

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-60826

HARRY W. VINSON: BRAD VINSON
Plaintiffs-Appellants

v.

DOROTHY COLOM: WILLIAM (BILL) BENSON, his agents and assigns and his insurance carrier; State Farm Fire and Casualty Co.; FRED M. BUSH, JR., his agents and assigns and his insurance carrier to be named after discovery; KAY TRAPP, her agents and assigns and her insurance carrier to be named after discovery; PHELPS DUNBAR LLP LAW FIRM, their agents and assigns and their insurance carrier to be named after discovery.
Defendants- Appellees.

- - - - - - - - - -

Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen

- - - - - - - - - -

Before JOLLY, HIGGINBOTHAM, and EMILIO M. GARZA, Circuit Judges

PER CURIAM:

IT IS ORDERED that the petition for rehearing be DENIED.

ENTREATED FOR THE COURT:

/s/ E. Grady Jolly

United States Circuit Judge

file date: August 25, 2000

Supreme Court, U.S.
FILED
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No. 00-765

IN THE

Supreme Court of the United States

HARRY W. VINSON and BRAD VINSON,

Petitioners,

v.

DOROTHY COLOM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT WILLIAM (BILL) BENSON

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STATEMENT OF THE CASE

Relevant Factual Elements

On or about November 18, 1998, Chancellor Dorothy Colom ("Colom") entered a Final Decree in Cause #96-0078 and #96-1100 in the Chancery Court of Lee County, Mississippi, regarding the appointment of a guardian for Woodrow and Kernith Vinson, parents of Petitioner Harry Vinson and grandparents of Petitioner Brad Vinson (collectively "Petitioners"). The Petitioners were parties to these actions and timely perfected their appeals to the Mississippi Supreme Court from these guardianship appointments on or about December 9, 1998.

On February 2 and 3, 1999, Colom presided over a hearing in which Kernith Vinson sought a temporary restraining order and preliminary injunction against the Petitioners. The purpose of Kernith Vinson's Petition was to prohibit the Petitioners herein from taking any actions concerning Woodrow W. Vinson. Fred M. Bush, Jr. ("Bush") and Kay Trapp ("Trapp"), both attorneys with the law firm of Phelps Dunbar, LLP ("Phelps"), represented Kernith Vinson in this matter. Upon conclusion of this hearing, Colom granted the preliminary injunction sought by Mrs. Vinson and enjoined the Petitioners from taking any of the following enumerated list of actions:

1. Taking further action of any kind using any power of attorney or other document executed by Woodrow W. Vinson;

2. Taking any action of any kind to prohibit or prevent Kernith B. Vinson, Rita K. Vinson or any other family member or friend from visiting with Woodrow W. Vinson while hospitalized;

3. Acquiring or attempting to acquire signatures on any legal or other type of document from either Woodrow W. Vinson or Kernith B. Vinson;

4. Transferring, withdrawing, disposing of or dealing with in any way, any funds belonging to Woodrow W. Vinson or Kernith B. Vinson, since November 18, 1998; and

5. Taking any action that would in any way affect any real or personal property or other assets belonging to Woodrow W. Vinson or Kernith B. Vinson since November 18, 1998.

Petitioner Harry Vinson was further enjoined from preventing Woodrow W. Vinson from returning to his home upon his release from North Mississippi Medical Center in Tupelo, Mississippi.

By order dated March 19, 1999, Colom appointed William (Bill) Benson ("Benson"), Chancery Clerk for Lee County, Mississippi, as Conservator for Woodrow W. Vinson and Kernith B. Vinson.

On March 31, 1999, Petitioners filed their Complaint against Respondents Colom, Benson, State Farm Fire and Casualty Company ("State Farm"), Bush, Trapp, and Phelps (collectively "Respondents"), alleging therein various federal Constitutional violations actionable pursuant to 42 U.S.C. §§ 1983 and 1985. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, all Defendants, including Benson, ultimately moved for dismissal of the Petitioners' claims on various grounds, including immunity. (R. 127, 144, 169, 260). Prior to the Court ruling upon the Respondents various motions to dismiss, the Petitioners

submitted numerous discovery requests which United States Magistrate Judge Jerry A. Davis held in abeyance pending resolution of the immunity issues presented in the various Respondents' motions to dismiss. (R. 174, 345). On October 6, 1999, the District Court entered a memorandum opinion and order of dismissal granting all pending motions to dismiss presented by the Respondents. (R. 376). The District Court's October 6, 1999 order of dismissal further barred the Petitioners from filing any further action in the United States District Court for the Northern District of Mississippi without prior written permission from that Court. (R. 376).

PERCEIVED MISSTATEMENTS OF FACT OR LAW IN THE PETITION THAT BEAR ON WHAT ISSUES PROPERLY WOULD BE BEFORE THE COURT IF CERTIORARI WERE GRANTED.

The instant Petition is based upon a number of misstatements of fact. The first is Petitioners' patently false statement concerning actions taken in the Lee County, Mississippi Chancery Court by Colom. The record clearly reflects that Colom entered an order on November 18, 1998 concerning the appointment of a guardian for Woodrow and Kernith Vinson, which decision was ultimately appealed to the Mississippi Supreme Court on or about December 9, 1998. Petitioners argue in their Petition, apparently for the first time, that no November 18, 1998 order exists. (Pet. 4). Not surprisingly, Petitioners make no reference to the record in support of their contention. Clearly this is merely an effort to distract the court's attention from the real issue in this matter, that being the ultimate dismissal of the Petitioners' Complaint.

The second misstatement asserted by Petitioners is that "averments in the complaint were not answered pursuant to the rules of court". (Pet. 5). Again, as recognized by Petitioners elsewhere, and as clearly set forth in the District Court's order of dismissal and memorandum opinion, all Respondents, including Benson, filed timely motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (R. 127, 144, 169, 260). As the court is well aware, a motion to dismiss pursuant to Rule 12(b)(6) may be made in lieu of an answer and, despite Petitioners' assertion to the contrary, filing of a motion to dismiss pursuant to the aforesaid rule, rather than an answer, does not constitute a failure to respond to, or failure to deny the allegations of, the complaint.

Petitioners further contend that United States Magistrate Judge Jerry A. Davis' orders holding in abeyance discovery pending resolution of the immunity issues presented in the Respondents' motions to dismiss deprived the Petitioners of the opportunity to "prove their case". (Pet. 5-6). As the Court is well aware, a motion to dismiss, pursuant to Rule 12(b)(6), tests the legal sufficiency of the complaint, and in considering such a motion, the District Court is limited to the pleadings submitted by the parties. In any case, the District Court ultimately dismissed Petitioners' Complaint as the claims set forth therein were expressly barred by the immunity issues raised in the Respondents' motions to dismiss. Application of the quasi-judicial immunity defense asserted by Benson, as well as other defenses asserted by the remaining Respondents, were clearly questions of law, rather than fact, thereby obviating the need for any discovery, specifically discovery not relevant to the Respondents' immunity defenses.

REASONS FOR DENYING THE WRIT

Although the issues raised by Petitioners are generally ambiguous and conclusory in nature, the general thrust of the Petition focuses on the District Court's limitation of discovery and subsequent limitation on Petitioners' ability to file further, frivolous lawsuits in that court. It is well settled that a court may limit the sequence and filing of causes of action, especially where a pattern of frivolous and harassing complaints exist, in order to control its docket. Further, a District Court may properly limit discovery, where appropriate, especially where the discovery at issue will not assist in resolution of any issues before the Court. Petitioners further contend that the Fifth Circuit Court of Appeal's affirmance of the District Court's judgment pursuant to the Rooker-Feldman doctrine is improper. Unfortunately, this allegation is likewise without merit as the Fifth Circuit Court of Appeals correctly adduced that issues presented in Petitioners' federal court action were so intertwined with the pending state court appeal to the Mississippi Supreme Court, as to render them practically inseparable. In such an event, the federal courts are without jurisdiction and, accordingly, affirmance of the District Court's dismissal was appropriate. Given the foregoing, Respondent Benson respectfully requests that the Writ should be denied.

I.

THE DISTRICT COURT'S DECISION AND FIFTH CIRCUIT'S AFFIRMANCE THEREOF ARE IN COMPLIANCE WITH APPLICABLE LAW.

A review of the District Court's October 6, 1999 memorandum opinion dismissing Petitioners' Complaint clearly reveals that the Court dismissed all claims against Benson, and his surety bond, State Farm, based upon the doctrine of quasi-judicial immunity. Pursuant to Mississippi law, state court clerks, such as Benson, are entitled to quasi-judicial immunity for actions taken pursuant to their official position. *See Boston v. Lafayette County, Mississippi*, 744 F. Supp. 746, 750 (N.D. Miss. 1990), *aff'd*, 933 F.2d 1003 (5th Cir. 1991); *Johnson v. Craft*, 673 F. Supp. 191, 193 (S.D. Miss. 1987). (Pet. App. 1, *et al.*). The quasi-judicial immunity defense, applicable to Benson, has been widely recognized as a viable defense in Mississippi by the District Courts and Fifth Circuit Court of Appeals in other cases. *See Johnson v. Kegans*, 870 F.2d 992, 995 (5th Cir. 1989); *Hanner v. United States*, 660 F. Supp 77, 78 (S.D. Miss. 1986). Further, the protection enjoyed by court clerks has been recognized by other circuit courts as well. *See Rodrequez v. Weprin*, 116 F.3d 62, 66 (2d Cir. 1997) (finding inmate's § 1983 claim against court clerk barred by quasi-judicial immunity); *Wiggins v. New Mexico State Supreme Court Clerk*, 664 F.2d 812, 815 (10th Cir. 1981) (dismissing inmate's federal civil rights action against State Supreme Court Clerk on grounds of quasi-judicial immunity); *Slotnick v. Staviskey*, 560 F.2d 31, 32 (1st Cir. 1977) (recognizing court clerk's immunity from suits under § 1983). The Petitioners now attack the Fifth Circuit Court of Appeals affirmance of this decision, contending the Court's reliance

upon the Rooker-Feldman doctrine was error. As this court is well aware, the Rooker-Feldman doctrine prohibits federal courts from engaging in what is essentially appellate review of a state court decision. *See District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 68 L. Ed. 362, 44 S. Ct. 149 (1923). Accordingly, any potential error made by a state trial court is to reviewed, and if necessary corrected, by that state's appropriate appellate court; an aggrieved party's recourse at the federal level consists solely of the ability to petition the United States Supreme Court for a Writ of Certiorari. *See Weekley v. Morrow*, 204 F.3d 613, 615 (5th Cir. 2000); *Carbonell v. Louisiana Dept. of Health and Human Resources*, 772 F.2d 185, 188-89 (5th Cir. 1985). As referenced by the Fifth Circuit Court of Appeals in the order of affirmance, "The constitutional issues presented in the [Petitioner's] action are inextricably intertwined with the Chancery Court's order appointing Benson as [Woodrow] Vinson's Conservator. Accordingly, the [Petitioners'] action constituted a request that the district court review a state court decision." (Pet. App. 7, *et al.*). Undoubtedly the court was correct in its assertion, as the sole basis for the Petitioners' initial civil rights claim against Benson was based upon Benson's appointment by Colom. Underlying that claim, by necessity, is a contention that Colom's order appointing Benson was erroneous, and without authority. The Petitioners' proper remedy was to appeal this decision to the Mississippi Supreme Court, as Petitioners' had previously done in other matters, in order to address this issue. Petitioners' Complaint filed with the District Court, therefore, constituted an improper request for appellate review of a state court decision by a federal court, and thus, is prohibited.

II.

THE DISTRICT COURT POSSESSES THE INHERENT AUTHORITY TO REASONABLY CONTROL ITS DOCKET BY LIMITING THE FILING OF FRIVOLOUS LAW SUITS.

Petitioners further contend that the District Court was without authority to limit the Petitioners' ability to commence additional actions in the United States District Court for the Northern District of Mississippi absent prior approval. In making this argument, however, Petitioners ignore well-established law which allows a District Court to take such action to control its docket. Indeed, a long line of cases exists in both the Fifth Circuit Court of Appeal, and sister circuits, which holds an order, such as that entered by the District Court, is proper and does not constitute a violation of a party's "access to the courts" rights. Indeed, numerous courts have held that reasonable restrictions imposed on potential litigants, including the necessity of seeking prior permission from the court before commencing any action, are proper under controlling law and do not restrict any litigant's constitutional rights, especially where litigants, such as Petitioners, have a history of filing numerous frivolous and harassing actions. *See Cauthomb v. Rogers*, 116 F.3d 1334 (10th Cir. 1997); *Depineda v. Hemphill*, 34 F.3d 946 (10th Cir. 1994); *Murphy v. Collins*, 26 F.3d 541 (5th Cir. 1994); *In Re Martin v. Trigona*, 9 F.3d 226 (2d Cir. 1993); *Villar v. Crowley, Maritime Court*, 990 F.2d 1489 (5th Cir. 1993); *Copeland v. Green*, 949 F.2d 390 (11th Cir. 1991); *Farguson v. M. Bank of Houston, NA*, 808 F.2d 358 (5th Cir. 1986). The foregoing authorities explicitly illustrate the principle that potential litigants have no absolute or unconditional right of access to the courts, but rather are only entitled to a reasonable opportunity to be heard. *United States ex rel. Verdone v. Circuit Court of Taylor County*,

73 F.3d 669 (7th Cir. 1995); *Ciccarelli v. Carey Canadian Mines, Ltd.*, 757 F.2d 548 (3d Cir. 1985). Clearly the District Court's order does not prohibit the Petitioners from filing additional actions in the future, *in toto*; rather, said Order merely requires prior permission before doing so. (Pet. App. 1, *et al.*). Given the Petitioners' penchant for filing frivolous and harassing lawsuits, in conjunction with the District Court's ability to control the filing of such actions, Petitioners' argument on this point is without merit.

III.

THE DISTRICT COURT FOLLOWED APPLICABLE RULES OF CIVIL PROCEDURE, AND LOCAL RULES, IN LIMITING DISCOVERY IN THIS CAUSE.

The Petitioners further contend that the District Court erred in entering various orders staying discovery pending resolution of the Respondents' various immunity defenses. In regard to Benson, United States Magistrate Judge Jerry A. Davis entered an order dated May 7, 1999, pursuant to Section 4.I.A.(10) of the Uniform Civil Justice Expense and Delay Reduction Plan (now 26.1(A)(10) of the Uniform Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi) which stayed all discovery not relevant to the quasi-judicial immunity defense raised by Benson in his motion to dismiss, pending the District Court's ruling on said Motion. (R. 174). Uniform Local Rule 26.1(A)(10) states as follows:

> *Immunity Defense Cases*
>
> In all cases in which an immunity defense is pled, that defense shall be raised in a separate motion as expeditiously as possible after the filing of the

> complaint. The filing of an immunity defense motion *shall stay* all discovery not relevant to the immunity issue and stay the parties' obligation to make further disclosures pending the court's ruling on the motion at issue, including any appeal. The moving party shall submit to the Magistrate Judge an order granting the stay at the time the immunity defense motion is filed. The plaintiff shall promptly notify the Magistrate Judge of a decision on the immunity defense motion and submit an order lifting the stay. Within fifteen days of the order lifting the stay, the remaining defendant(s) shall file the initial disclosures and all other deadlines shall be determined accordingly. A case management conference shall be scheduled within sixty days of the order lifting the stay.

(Emphasis added). Uniform Local Rule 26.1(A)(10). The order entered by Magistrate Davis on May 7, 1999, is clearly and unequivocally in compliance with Rule 26.1(A)(10) as it unambiguously limits all discovery not relevant to the immunity issue. (R. 174, 345). In light of Magistrate Davis' clear compliance with the local rules, the provisions of which are mandatory in nature, the Petitioners' argument on this point is without merit. Further, the "discovery" issue raised by the Petitioners has no bearing on the District Court's dismissal, pursuant to Rule 12(b)(6), as such motion is designed solely to test the legal sufficiency of the Complaint, without reference to discovery or other evidence outside the pleadings. Under controlling law, therefore, the Petitioners' arguments concerning this issue are likewise without merit, and do not justify issuance of a Writ of Certiorari by this Court.

CONCLUSION

For all the foregoing reasons, Respondent William (Bill) Benson respectively requests that this Honorable Court deny the instant Petition for Writ of Certiorari.

Respectfully submitted,

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(3)

Supreme Court, U.S.
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No. 00-765

In The

SUPREME COURT OF THE UNITED STATES

IN RE: HARRY W. VINSON
BRAD VINSON

Petitioners

vs.

DOROTHY COLOM; ET AL

Respondents

REPLY TO BRIEF IN OPPOSITION FOR WILLIAM (BILL) BENSON

Harry W. Vinson
Brad Vinson
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in propria personna

8 pp

Response to alleged perceived misstatements of fact or law in the petition that bear on what issues properly would be before the court if certiorari were granted.

Contrary to Respondent Benson and his counsel's assertions, the original docket sheet of the case in question does not reflect an order signed by Dorothy Colom on 18 November 1998, the reason it doesn't is because one does not exist, the record does reflect that Judge Dorothy Colom was appointed, because of recusal of judges in district, after the date of the perfected appeal 9 December 1998, therefore she was not appointed to hear this matter on 18 November 1998. This is an easy matter to resolve, have Respondent Benson's counsel produce the final order he says she signed on that date and the order appointing her by the Supreme Court of Mississippi. Facts are facts.

The truth as the record reflects is that Chancellor Timothy Erwin consolidated case nos. 96-0078 and 96-1110 and issued a final order 13 **October 1998**, the final order Petitioners appealed 9 December 1998. *(It should be noted that the last inspection of the mentioned docket sheet contained numerous "whiteout" changed entries, therefore Petitioners do not know what it now reflects, but Petitioners have maintained progressive copies)*

Contrary to Respondent Benson's counsel's assertion Fed.R.Civ.P. Rule 8 clearly sets forth averments require a response and are deemed admitted when not denied. The averments that required a response were not answered by

Respondent Benson. Fed.R.Civ.P. Rule 12(b)(6) is not proper unless under no facts or circumstances could relief be granted. "Alleged immunity" would not be present if the alleged judge was without jurisdiction. Since the above mentioned cases had been consolidated, a final order issued by Chancellor Timothy Erwin and an appeal perfected to an appellate court, before Judge Dorothy Colom was wrongfully and illegally, appointed in this matter, thus she was wholly without authority or jurisdiction. Benson was shown to be acting, without authority, as an alleged conservator, as such creating constitutional violations of Petitioners and having circumstances where relief could be granted preclude Fed.R.Civ.P. 12(b)(6) without discovery.

Respondent Benson further misled the court in that Title alone does not bestow immunity. The acts complained of, such as judicial immunity, must have jurisdiction to apply. Further Benson was not acting as a Court Clerk in this matter, he was allegedly acting as an appointed conservator by a facially invalid temporary order.

RESPONSE TO REASONS FOR DENYING THE WRIT

Respondent Benson, throughout this case, has been trying to paint a picture of frivolous, harassing lawsuits. Petitioners have identified very serious problems affecting the mistakes of the courts, so it is a natural response for Respondent to try to make the Petitioners look like the bad guy on the block, and to protect and cover up the wrongful and illegal acts of the court and clerks. It is well settled the *Rooker Feldman* doctrine does not apply to temporary orders. Respondent admits on Page one of his opposition brief, that this was a temporary order. Facts are facts.

RESPONSE TO THE DISTRICT COURT'S DECISION AND FIFTH CIRCUIT'S AFFIRMANCE THEREOF WITH APPLICABLE LAW.

Respondent Benson's contentions are totally without merit. Benson was illegally appointed by a facially invalid temporary order issued by a judge appointed by an appellate court upon the recusal of the district judges, after a final order had been issued and appealed in this matter. Even if Judge Colom had had jurisdiction to appoint Benson conservator, he would not have been acting as a court clerk, with quasi immunity, in this matter. No judicial immunity is attached to acting as conservator.

Respondent Benson admits the order in question was temporary, therefore *Rooker Feldman* does not apply. Although the constitutional violations complained of, accrued during the alleged state proceedings, they are not appealable under Mississippi Law, therefore giving Petitioners no post deprivation relief. Title 42 U.S.C. 1983 is a congressional remedy for constitutional violations and damages resulting thereof. Even if remedies were available, the damages arising from this case could not be fixed on appellate review.

RESPONSE TO THE DISTRICT COURT POSSESSES THE INHERENT AUTHORITY TO REASONABLY CONTROL ITS DOCKET BY LIMITING THE FILING OF FRIVOLOUS LAWSUITS.

Contrary to Respondent's position, this very court has held that the party paying his way has access to the courts. The cases cited throughout this case refer to those proceeding in forma pauperis, therefore off point in this case. In Re: Sindram, 498 U.S. 177.

Oddly, Respondent Benson does not deny he violated Petitioner's Constitutional Rights. He only pleads that he is immune. Therefore, it cannot be said that the case is frivolous, without merit or was brought to harass. This lawsuit is based in fact and law. What we have are public officials committing numerous constitutional violations willingly and knowingly and then claiming alleged immunity without benefit of discovery or correction on appeal. Each one covering for the other.

RESPONSE TO THE DISTRICT COURT FOLLOWED APPLICABLE RULES OF CIVIL PROCEDURE, AND LOCAL RULES, IN LIMITING DISCOVERY IN THIS CASE.

Respondent Benson's argument attempts to allow an official to commit acts, immediately claim immunity and not allow discovery to see if in fact or law there is immunity for his actions. It is well settled Title alone bestows no immunity. Further Benson had not shown any authority making a conservator a member of the judiciary, whom might seek immunity. Discovery was necessary to determine if any of the acts complained of would give claim to immunity.

Congress passed Title 28 U.S.C. §2072 which states rules shall not abridge, enlarge or modify any substantive right. Congress passed Fed.R.Civ.P. Rule 26 - 37 to allow discovery, **period**. It is superior to any local rule as the courts have held if a constitutional violation is claimed, the claimant has stated a cause of action. Therefore, the counsel for Respondent Benson submitted his opposition response without merit. Further this court should grant certiorari to reaffirm congressional and judicial mandates upon the federal courts.

CONCLUSION

Respondent Benson's opposition clearly shows the court the need to grant certiorari in this matter so as to protect the constitutional rights afforded all litigants and to right a wrong done to Petitioners.

Respectfully submitted
without prejudice,

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